

PATENT COOPERATION TREATY
PCT
INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
(Chapter II of the Patent Cooperation Treaty)
(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 707151C:RDC:JPH	<div style="text-align: right;">See Form PCT/IPEA/416</div> FOR FURTHER ACTION	
International application No. PCT/AU2005/000413	International filing date (day/month/year) 23 March 2005	Priority date (day/month/year) 23 March 2004
International Patent Classification (IPC) or national classification and IPC Int. Cl. A61B 1/267 (2006.01)		
Applicant SYDNEY WEST AREA HEALTH SERVICE et al		

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of **5** sheets, including this cover sheet.
3. This report is also accompanied by ANNEXES, comprising:
 - a. ☒ (sent to the applicant and to the International Bureau) a total of **4** sheets, as follows:

☒ sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).
☐ sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.
 - b. ☐ (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or table related thereto, in electronic form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).
4. This report contains indications relating to the following items:

<input checked="" type="checkbox"/>	Box No. I	Basis of the report
<input type="checkbox"/>	Box No. II	Priority
<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
<input checked="" type="checkbox"/>	Box No. IV	Lack of unity of invention
<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
<input type="checkbox"/>	Box No. VI	Certain documents cited
<input type="checkbox"/>	Box No. VII	Certain defects in the international application
<input type="checkbox"/>	Box No. VIII	Certain observations on the international application

Date of submission of the demand 20 October 2005	Date of completion of this report 28 March 2006
Name and mailing address of the IPEA/AU AUSTRALIAN PATENT OFFICE PO BOX 200, WODEN ACT 2606, AUSTRALIA E-mail address: pct@ipaustralia.gov.au Facsimile No. (02) 6285 3929	Authorized Officer MATTHEW FORWARD Telephone No. (02) 6283 2606

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.
PCT/AU2005/000413

Box No. I Basis of the report

1. With regard to the language, this report is based on:

- ☒ The international application in the language in which it was filed, which is the language of a
- ☐ A translation of the international application into translation furnished for the purposes of:

- ☐ international search (under Rules 12.3(a) and 23.1 (b))
- ☐ publication of the international application (under Rule 12.4(a))
- ☐ international preliminary examination (Rules 55.2(a) and/or 55.3(a))

2. With regard to the elements of the international application, this report is based on (replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report):

☐ the international application as originally filed/furnished

☒ the description:

pages 1 to 11 as originally filed/furnished

pages* received by this Authority on with the letter of

pages* received by this Authority on with the letter of

☒ the claims:

pages as originally filed/furnished

pages* as amended (together with any statement) under Article 19

pages* 12 to 15 received by this Authority on 20 October 2005 with the letter of 20 October 2005

pages* received by this Authority on with the letter of

☒ the drawings:

pages 1/5 to 5/5 as originally filed/furnished

pages* received by this Authority on with the letter of

pages* received by this Authority on with the letter of

☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing.

3. ☐ The amendments have resulted in the cancellation of:

☐ the description, pages

☐ the claims, Nos.

☐ the drawings, sheets/figs

☐ the sequence listing (specify):

☐ any table(s) related to the sequence listing (specify):

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

☐ the description, pages

☐ the claims, Nos.

☐ the drawings, sheets/figs

☐ the sequence listing (specify):

☐ any table(s) related to the sequence listing (specify):

* If item 4 applies, some or all of those sheets may be marked "superseded."

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.
PCT/AU2005/000413

Box No. IV Lack of unity of invention

1. ☐ In response to the invitation to restrict or pay additional fees the applicant has, within the applicable time limit:

- ☐ restricted the claims
- ☐ paid additional fees
- ☐ paid additional fees under protest and, where applicable, the protest fee
- ☐ paid additional fees under protest but the applicable protest fee was not paid
- ☐ neither restricted the claims nor paid additional fees

2. ☒ This Authority found that the requirement of unity of invention is not complied with and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees.

3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is:

- ☐ complied with.
- ☒ not complied with for the following reasons;

The international application does not comply with the requirements of unity of invention because it does not relate to one invention or to a group of inventions so linked as to form a single general inventive concept. In coming to this conclusion the International Searching Authority has found that there are different inventions as follows:

1. Claims 1-12 and 19 to 29 define an oropharyngeal device having a locating flange at a proximal end; a tube with a distal end at the base of the tongue; a first opening in the distal end that aligns with the opening of the larynx and a second opening in a posterior surface that aligns with the junction of the nasopharynx and the oropharynx. It is considered that the location of these openings characterises the first special technical feature
2. Claims 13, 14 to 18, 23, 28 and 29 define an oropharyngeal device having a locating flange at a proximal end; a second end that extends to a location closely adjacent the base of the tongue and internal markings. It is considered that a device with internal marking for the purpose of guiding an endoscope there through comprises a second special technical feature.

4. Consequently, this report has been established in respect of the following parts of the international application:

- ☒ all parts.
- ☐ the parts relating to claims Nos.

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.
PCT/AU2005/000413

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims 1 to 29	YES
	Claims	NO
Inventive step (IS)	Claims 1 to 29	YES
	Claims	NO
Industrial applicability (IA)	Claims 1 to 29	YES
	Claims	NO

2. Citations and explanations (Rule 70.7)

The following documents identified in the International Search Report have been considered for the purposes of this report:

- D1 FR 2489686 (WILLIAMS)
- D2 WO 2003051186 (TJONG JOE WAI)
- D3 WO 1999038432 (JOHNS HOPKINS UNIVERSITY)
- D4 JP 8206224 (MIYABARA)
- D5 US 5174283 (PARKER)
- D6 US 5339805 (PARKER)
- D7 WO 2002047549 (WILSON COOK MEDICAL, INC.)
- D8 US 5617858 (TAVERNA et al)
- D9 JP 2003310537 (OLYMPUS OPTICAL CO LTD.)

The claims are characterised by two major features. A first opening in the distal end that aligns with the opening of the larynx and a second opening in a posterior surface that aligns with the junction of the nasopharynx and the oropharynx (independent claim 1); and internal marking for the purpose of guiding an endoscope (independent claims 13 and 14).

None of the documents D1 to D9 disclose these features either alone or in combinations obvious to a person skilled in the art.

Relevant to the first special technical feature:

D1 discloses an oropharyngeal airway device with unitary tube having a passage there through with a locating flange (4) and with a tube of hook shape. D2 discloses an instrument which is to be introduced into the human pharynx with unitary tube (4) having passage there through with locating flange (31) and with a tube of hook shape. D3 discloses an instrument which is to be introduced into the human pharynx with unitary cannula (12) which is tube having passage with locating flange (24) and with a tube of hook shape. D4 discloses an instrument which is to be introduced into the human pharynx with unitary tube (8, 9) having passage with locating flange (11) and with a tube of hook shape. D5, D6 disclose medical devices for location in a patient mouth, which have a protuberance configured to locate the device by engagement in vallecula between the epiglottis and the back of the tongue.

Supplemental Box

In case the space in any of the preceding boxes is not sufficient.

Continuation of: Box V

Relevant to the second special technical feature:

D7 discloses wire guide that is used with endoscopic procedure which includes a system of indicia comprising a scale reference marking located on distal portion of elongate member. D8 discloses apparatus for endoscopic examination of patients with a visible distance scale or indication along a length thereof. The position detection means comprise a small video camera (7) with mounting device (7A). D9 discloses a shaft (2) to be orally inserted to the abdominal cavity with indicia on external surface of the shaft.

Thus claims 1 to 29 satisfy Articles 33(2) to 33(4) of the PCT. The claimed inventions are novel, possess an inventive step and have a self evident industrial application.